

OPEN MEETING ITEM



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COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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DATE: JANUARY 20, 2009

DOCKET NO: T-02532A-03-0017

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Order on:

MIDVALE TELEPHONE EXCHANGE, INC.
(EXTENSION OF TIME DEADLINE CONTAINED
IN DECISION NO. 66510)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JANUARY 29, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

FEBRUARY 3, 2009 and FEBRUARY 4, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

JAN 20 2009

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DOCKETED BY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF
9 MIDVALE TELEPHONE EXCHANGE, INC.
10 FOR AUTHORIZATION TO PROVIDE
11 FACILITIES-BASED BASIC LOCAL
12 EXCHANGE SERVICE AND TOLL ACCESS
13 TELEPHONE SERVICE TO CURRENTLY
14 UNSERVED RESIDENTIAL DEVELOPMENTS
15 KNOWN AS CROSSROADS RANCH, POQUITO
16 VALLEY AND BREEZY PINE.

DOCKET NO. T-02532A-03-0017

DECISION NO. _____

ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NO. 66510

11 Open Meeting
12 February 3 and 4, 2009
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. On January 10, 2003, Midvale Telephone Exchange, Inc. ("Midvale") filed with the
19 Arizona Corporation Commission ("Commission") an application for an extension of its existing
20 Certificate of Convenience and Necessity ("CC&N") to provide local telephone service in Yavapai
21 County, Arizona. Midvale intended to provide basic local exchange service to customers in the
22 extension area by using a combination of copper distribution cable, digital loop carrier systems, fiber
23 optic cable, and digital microwave radio.

24 2. On November 10, 2003, the Commission issued Decision No. 66510, granting
25 Midvale the extension of its CC&N and conditioning the extension upon (1) Midvale's filing, within
26 365 days of the effective date of the Decision, an update to its franchise with Yavapai County that
27 included the CC&N extension area; and (2) Midvale's filing with the Director of the Commission's
28

1 Utilities Division, within 365 days of the effective date of the Decision, a certification that Midvale
2 had obtained all of the required tower and right-of-way permits to serve the CC&N extension area.
3 The legal descriptions included in the Decision for the CC&N extension area referred to two different
4 areas—Crossroads and Poquito Valley.

5 3. Midvale did not file, by November 10, 2004, either the updated Yavapai County
6 franchise or a certification that Midvale had obtained all of the required tower and right-of-way
7 permits to serve the CC&N extension area.

8 4. On November 21, 2005, Midvale filed a Notice of Compliance and Request for an
9 Extension of Time in Which to Comply. In the Notice, Midvale stated that its Yavapai County
10 franchise had been extended to include Crossroads Ranch, but that Yavapai County had informed
11 Midvale that a franchise extension for Poquito Valley was not necessary, as the area encompassed
12 only private roadways. Midvale stated that it had nonetheless requested that Yavapai County grant
13 the franchise extension for Poquito Valley and that a hearing on the matter was scheduled for
14 December 5, 2005. Midvale requested an extension of time, until March 1, 2006, to comply with the
15 filing requirement for the franchise extension. Regarding the filing requirement for the tower and
16 right-of-way permits, Midvale stated that it had located a tower in Crossroads Ranch on which to
17 collocate, for which no permit was required; that Midvale had received Federal Communications
18 Commission permits for all of the required towers; and that Midvale lacked only the special-use
19 permit for microwave in Poquito Valley. Midvale stated that it had not yet begun construction in
20 Poquito Valley, that it would be some time before it did so, and that it had not yet sought right-of-
21 way permits in the area. Midvale stated that it anticipated beginning construction and obtaining the
22 permit during 2006. Midvale requested an extension of time, until December 31, 2006, to file the
23 permit with the Commission.

24 5. On January 4, 2006, a Procedural Order was issued requiring Staff to file, by January
25 17, 2006, a response to Midvale's request for extension of time.

26 6. On January 17, 2006, Staff filed a memorandum stating that it believed Yavapai
27 County had granted Midvale the franchise extension to include Poquito Valley on December 5, 2005,
28 and that Midvale would be filing it in the near future. Staff also stated that it did not object to

1 Midvale's request for an extension of time in which to comply with the two conditions.

2 7. On February 1, 2006, a Procedural Order was issued granting Midvale's request for
3 extension of time, allowing it until March 1, 2006, to file its updated Yavapai County franchise and
4 until December 31, 2006, to file a certificate showing that it had obtained all of the required tower
5 and right-of-way permits for the CC&N extension area.

6 8. On February 16, 2006, Midvale filed a Notice of Compliance to which was attached a
7 copy of its Yavapai County franchise, issued on December 5, 2005, updated to include both
8 Crossroads and Poquito Valley.

9 9. Midvale did not file with the Commission by December 31, 2006, a certificate
10 showing that it had obtained all of the required tower and right-of-way permits for the CC&N
11 extension area.

12 10. On May 29, 2007, Midvale filed a letter to the Commission's Compliance Division
13 acknowledging the outstanding filing requirement for the required tower and right-of-way permits
14 and explaining that Midvale's plan to serve Poquito Valley by locating a receiving microwave tower
15 there had been changed as a result of residents' objecting to the placement of the tower. Midvale
16 stated that rather than obtaining permission for placement of the tower over residents' objections,
17 Midvale had decided to install underground cable from its switch in Dewey to Poquito Valley. Thus,
18 Midvale stated it would not be obtaining the tower and right-of-way permits referenced in the
19 compliance requirement. Midvale stated that it had an application pending before the Commission
20 for financing to be used in part to install the underground cable necessary to serve Poquito Valley.
21 Midvale stated that this information should allow Staff to close the file regarding Midvale's
22 compliance with Decision No. 66510.

23 11. On June 29, 2007, Midvale filed a request for the Commission to amend Decision No.
24 66510 by eliminating the requirement to file the certification that it had obtained all of the required
25 tower and right-of-way permits.

26 12. No action was taken by the Commission in response to Midvale's request to amend
27 Decision No. 66510, and nothing relating to the requirement to file the certification was filed in the
28 docket for more than a year.

1 13. On November 7, 2008, Midvale filed a Compliance Status Filing, intended as a
2 follow-up to its letter filed May 29, 2007. Midvale provided a list of the various permits required to
3 install the underground cable necessary to serve Poquito Valley and the status of each, as follows:

4 a. National Forest Service ("NFS") Permit: Midvale stated that an application
5 had been submitted on February 20, 2007, to cross approximately 10 miles within the
6 Prescott National Forest, and that NFS had estimated that a decision would be issued
7 by the end of 2008.

8 b. Bureau of Land Management ("BLM") Permit: Midvale stated that an
9 application had been submitted on October 29, 2007, to cross approximately ½ mile of
10 land administered by BLM; that BLM had only recently assigned personnel to
11 evaluate the application; and that Midvale hoped to receive a decision early in 2009.

12 c. Arizona State Land Department ("ASLD") Permit: Midvale stated that an
13 application had been submitted on March 18, 2008, to cross approximately 7 miles of
14 Arizona Trust Land; that ASLD had informed Midvale that it had all the information
15 necessary to render a decision; and that Midvale expected a decision early in 2009.

16 d. Arizona Department of Transportation ("ADOT") Permit: Midvale stated that
17 an application had been submitted on April 30, 2008, to cross approximately 7 miles
18 of State Route 89A right-of-way and that ADOT had informed Midvale on August 26,
19 2008, that all required information had been received and a permit to construct would
20 be issued within 30 days of Midvale's beginning construction.

21 e. Yavapai County Permit: Midvale stated that Yavapai County had indicated on
22 January 11, 2008, that it had no concerns regarding the project and that it would issue
23 an easement to occupy the right-of-way upon receipt of an application. Midvale stated
24 that it would submit its application in early 2009, when the other permitting agencies
25 neared completion of their respective permitting processes.

26 14. Midvale currently has another CC&N extension application pending in Docket No. T-
27
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1 02532A-07-0586 ("the current CC&N extension docket").¹ At the hearing in the current CC&N
2 extension docket, held on November 10, 2008, Midvale testified as to its original intent to serve
3 Poquito Valley through a microwave site, for which it was required to get a special-use permit from
4 Yavapai County. (Tr. at 31, lines 11-15.) Midvale testified that for every location for which Midvale
5 applied to get a permit to serve Poquito Valley, Midvale met with resistance from contiguous
6 property owners. (Tr. at 31, lines 16-19.) Midvale testified that, as a result, it decided to instead
7 build a fiber optic route from its central office location, which necessitated traversing federal and
8 state land and obtaining permits to do so from NFS, BLM, and ASLD. (Tr. at 31, lines 20-24; Tr. at
9 32, lines 1-2.) Midvale testified that those permitting processes are very lengthy, taking up to two
10 years, and that Midvale had neglected to keep Staff informed of the process. (Tr. at 32, lines 1-6.)
11 Midvale testified that it will do a better job of keeping Staff informed in the future. (Tr. at 32, lines
12 7-10.) Midvale also testified that it was willing to file a request for an extension of time to comply
13 with Decision No. 66510 and that it believed the permitting for that matter would be completed by
14 the end of 2009. (Tr. at 32, line 21 through Tr. at 33, line 9.) Staff testified that the request for an
15 extension would be a good way to handle the delinquent compliance issue and that Staff would not
16 oppose such a request. (Tr. at 38, lines 2-9.) Staff also testified that it appeared the receipt of the
17 permits was approaching and that it would be beneficial for those permits to be received and the
18 residents of Poquito Valley to be served by Midvale. (Tr. at 38, lines 12-20.)

19 15. On November 17, 2008, Midvale filed a Request for Extension of Time for
20 Compliance with Decision 66510, requesting an extension, to December 31, 2009, of Midvale's
21 deadline for filing the certification that it has obtained all required permits. Midvale provided the
22 following updates to the information filed on November 7, 2008:

- 23 a. NFS Permit: Midvale stated that NFS has indicated that Midvale has provided
24 all information required under the National Environmental Policy Act for evaluation
25 of Midvale's permit application and that NFS has forwarded the cultural survey report
26 to the Arizona State Historic Preservation Office ("AZ SHPO") and is awaiting an AZ
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28 ¹ Official notice is taken of the contents of the Transcript in the current CC&N extension docket. References to "Tr." denote references to the Transcript in the current CC&N extension docket.

1 SHPO reply, which will complete the information needed for NFS to render a
2 decision. Midvale estimated that the NFS permit will be issued by the end of February
3 2009.

4 b. BLM Permit: Midvale reiterated the information provided in its November 7,
5 2008, filing.

6 c. ASLD Permit: Midvale reiterated the information provided in its November 7,
7 2008, filing.

8 d. ADOT Permit: Midvale clarified the information provided in its November 7,
9 2008, filing by stating that a permit to construct will be issued within 30 days of
10 Midvale's indicating to ADOT that it is ready to begin construction.

11 e. Yavapai County Permit: Midvale reiterated the information provided in its
12 November 7, 2008, filing.

13 16. On December 17, 2008, Staff filed a memorandum stating that Staff understands the
14 need for additional time for the permitting processes and communicated that at the hearing in the
15 current CC&N extension docket. Staff stated that additional time is appropriate due to Midvale's
16 shift in construction and the associated permitting responsibilities. Staff recommends that the
17 Commission grant Midvale an extension of time until December 31, 2009.

18 17. Midvale should have been more proactive about keeping the Commission informed of
19 the difficulties it encountered with its original plan to use a microwave tower to serve Poquito Valley
20 and of its ultimate decision to change that plan. However, Midvale is making progress in obtaining
21 the permits necessary to serve the Poquito Valley through alternate means, and we believe that the
22 public interest will be served if Midvale is allowed additional time to certify that it has obtained the
23 permits needed to serve the Poquito Valley through underground fiber optic lines. Thus, we agree
24 with and adopt Staff's recommendation to grant Midvale an extension of time, until December 31,
25 2009, to comply with the outstanding filing requirement of Decision No. 66510.

26 CONCLUSIONS OF LAW

27 1. Midvale is a public service corporation within the meaning of Article XV of the
28 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

1 SERVICE LIST FOR: MIDVALE TELEPHONE EXCHANGE, INC.

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3 DOCKET NO.: DOCKET NO. T-02532A-03-0017

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